

LEGAL PROTECTION OF THE CHILDREN ON VIOLENCE BY THE PARENTS (A Study in Demak)

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Abstract

The criminal act of domestic violence is very common talk among the public. Domestic violence often occurs due to several factors, among which are economic factors that occur in the household as was the case between husband and wife or parents and children. The method used is the juridical methods of sociology with emphasis on research that was done on the real state of society. Research shows that the legal protection of children as victims of criminal acts of violence committed by parents in the region, namely Demak amicably and legal action.

Keywords: Children; Violence by Parent; Legal protection.

A. INTRODUCTION

In essence, the family and the household is first and foremost a place for the child's mental development and formation of personality which is then refined by the school and the surrounding environment (social) in which children grow and develop. In Islam stated that the duty of parents is to fulfill everything that her child needs both in the form of material and immaterial form of love and affection that is a major factor in the formation of the child's personality.

Many parents think child abuse is normal. They assumed a violent manner is a way to discipline children. They forget that the parent is the person most responsible for seeking the welfare, protection, increased survival, and optimize the development of the child.

Domestic violence often occurs, but it is always concealed or covered up by families or by victims. Generally, the victims are the perempun and child, which both parties regarded as weak and do not have

special privileges even to defend himself in front of the other party as a husband and father. Domestic violence contain specifications or specificity lies in the relationship between the offender and the victim, the relationship kekeluargaan or employment relationship (Helper).

Behavior or criminal offenses committed on an individual basis according to John Conrad in his Yasmil can be grouped as follows:

1. Violence is influenced by cultural factors
2. Violence committed in the context of crime
3. Psychological Violence
4. The violence that unintentionally
5. Institutional violence
6. Situational violence
7. Violence silent
8. Violence Technologist
9. Violence bureaucratic.¹

Although in Indonesia has Act. No.23 of 2002 on Child Protection, which has been

¹ Yesmil Anwar and Adang, 2010, *Criminology*, Refika Aditama, Bandung, p.412.

converted into Act. No.35 of 2014 on Amendments to the Law on Child Protection and Act. No.23 of 2004 on the Elimination of Domestic Violence, but in fact violence against children in the household are still common.

Child abuse is any act that injures and adverse physical, mental, and sexual abuse including insults include; neglect and mistreatment, exploitation and including sexual exploitation and trafficking or sale of children. Of the causes of violence against children that occurred, including the first, the emergence of domestic violence. Secondly, the occurrence of family dysfunction, which is the role of parents is not running as seharusnya. Ketiga, economic factors, namely violence arising from economic pressure. Depressed economic conditions pressed by the family is a factor that a lot happened.

The criminal acts of domestic violence are included in the category of crimes against human dignity and honor. These criminal acts are also bad for the victims, especially in this case of child victims, so that the child can be traumatized and personally make a closed environment. Violence perpetrated leads to behavior that violates the law, whether in the form of threat or action which has consequences or damage to property or physical or causes death to a person.

Based on the function of the law, as a means of social control, any regulations governing the levy was created to run in accordance with the purpose and meaning contained. Society as the party required to comply with legal regulations. Child protection efforts need to be implemented as early as possible, ie, since the fetus in the womb until the child is aged 18

(eighteen) years. In doing coaching, development, and protection of children, religious institutions, non-governmental organizations, community organizations, social organizations, businesses, media, or educational institution.²

Legal protection is the protection of the dignity will, srta recognition of human rights that are owned by the legal subject under the provisions of the law of arbitrariness or as a set of rules or rules that would be able to protect something of other things. In connection with the consumer, the law provides protection to the rights of the customers of something which has resulted in the fulfillment of these rights. According Setiono, legal protection is an act or an attempt to protect the public from arbitrary actions by the authorities are not in accordance with the rule of law, to bring order and peace so as to enable people to enjoy dignity as human beings.³

According to Barda Nawawi Arief, the legal protection of children is a legal safeguard against the freedoms and rights of children (fundamental rights and freedom of children) as well as the various interests related to the welfare of children.⁴ Child protection is a joint activity aimed at seeking security, procurement and fulfillment of spiritual and physical welfare of children in accordance with their interests and their human rights. Based on the description of the background mentioned above, how the legal protection of children as victims of

2 Mohammad Taufik Makarao, 2014, *the Law of Child Protection and Elimination of Domestic*, Publisher Rineka Copyright, Jakarta, p.104.

3 Setiono, 2004, *Rule Of Law*, Master of Legal Studies University Post Graduate Program, Surakarta, p.3.

4 Barda Nawawi Arief, 1998, *Some Aspects of Enforcement Policy and Development of the Criminal Law*, Citra Aditya Bakti, Bandung, p.156.

criminal acts of violence committed by parents in the jurisdiction of Demak Police Officer?

This study is the sociological juridical approach, namely legal research using secondary data as the data initially, followed by a primary data or data field on the effectiveness of the law, the relevant law does not concessioned as a symptom of the normative autonomous, but a social institution that is the real deals with social variables.⁵

Collecting data that consists of the study of documents, observation (observation), and interviews with the analysis conducted in this paper is a qualitative analysis, ie ordinances research that produces descriptive data analysis, that is what is obtained from the research literature researched and studied as a whole⁶,

B. DISCUSSION

1. Legal Protection Against Children As Victims of Crime of Violence Conducted By Parents at Demak Jurisdiction

Many people find it difficult to understand why someone would hurt her own child. People often assume that people who abuse their child had a mental disorder. But many abusers actually loved her children but tend to be less patient and less mature mentally in human resources (HR). Characters like these make it very difficult to meet the needs of children and increases the

likelihood of physical violence or emotional. However, no thorough explanation about child abuse.

The occurrence of child abuse can be caused by the condition and behavior of children that the child sendiri. Kondisi example: children suffering from developmental disorders, dependence of children on the environment, the child has a disability, behavioral disorders, children with deviant behavior and personality types of the child's own.

According to the results of Demak public complaints about violence against children committed by parents who have been accepted by the Police Demak this along, it can be concluded that the causes of violence against child which occur are:

1. Domestic violence, which occurs in the family violence involving both the father, mother and brother were lainnya. Kondisi cause the inevitability of violence occurred also in children. Kids are often the target of the anger of parents.
2. Family dysfunction, which is the role of parents is not running as it should. Dysfunction their father's role as leader of the family and the role of the mother as someone who is guiding and caring.
3. Economic factors, namely violence arising from pressure ekonomi. Tertekannya family conditions resulting economic pressure is a factor that a lot happened.
4. Mistaken views about the child's position in the old keluarga. Orang

5 Arpanji, Amin Wastoni, *Systems Educational Punishment Against Children as Actors of Crime*, Journal of Law Reform, Volume II # 2 May-August 2015 p.217.

6 Soerjono Soekanto, 1986, *Introduction to Legal Studies*, University of Indonesia Press, Jakarta, p.250.

assume that the child is a person who does not know any parenting apa. Dengan thus entitled to do by parents.⁷

In addition, other factors are inspired by television images or other media that are spread in the environment masyarakat. Yang very surprising that almost more than 62% of television and other media have been building and creating a way of thinking and imagination so that they apply in a violent behavior.

Abu Huraerah see these three things is the originator of the initial situation or condition of the emergence of child abuse. In turn, these conditions continue in the incorrect behavior of parents towards their children. Many are several things that trigger the cause of the child abuse performed by the parents themselves among is;

1. Stress comes from children. That is, the child's condition is different, different mental or child is a foster child.
2. Family Stressing. That is unemployment poverty mobility, isolation, inadequate housing, children who are not expected and so forth.
3. Stress comes from the parents. Low self-esteem, a small time gain of mistreatment. Depression, hope in children who are not realistic, character disorders / mental illness.⁸

7 Interview with AKP Tri Agung Suryomicho, SH, MH Invisible Criminal Police as Demak Day Monday, September 11th, 2017 at 10:00 pm, Located in police station at Demak.

8 Abu Huraerah, 2006, *Violence Against Children*, Sinar Jaya, Jakarta, p.16.

Basically, every person is prohibited to place, let, do, told to do, or was involved in the violence against children Section 76C of Law 35 of 2014 on Protection of Children threat of sanctions contained in Article 80 of Law 35 of 2014 on Child Protection, which reads:

1. Any person who violates the provisions in Article 76C shall be punished with imprisonment of three (3) years and 6 (six) months and / or a fine of not more Rp72.000.000,00 (seventy two million).
2. In the case of children as mentioned in paragraph (1) serious injury, the offender shall be punished with imprisonment of 5 (five) years and / or a fine of Rp 100,000,000.00 (one hundred million rupiah).
3. In the case of children as mentioned in paragraph (2) dies, the offender shall be punished with imprisonment for a period of 15 (fifteen) years and / or a fine of Rp3.000.000.000,00 (three billion rupiah).
4. Criminal plus one-third of the provisions referred to in paragraph (1), (2) and (3) if the person who committed abuses His parents.

Because of the violence against your are parents themselves, then we refer to Article 76C jo. Article 80 paragraph (1) jo. Article 80 paragraph (4) of Law 35 of 2014 regarding Child Protection That is, the threat of imprisonment meted out to her parents is plus one-third of imprisonment and /

or criminal penalties referred to in Article 80 (1) of Law 35/2014.

In resolving problems and violence perpetrated by parents against their children should prioritize pathways kekeluargaan first if on the part of tau perform an action a mistake and promised not to repeat his actions again because there will cause a lot of factors if a little should be brought to trial , It will also affect the child's mental and psychological factors related to their parents to support the child's future. Efforts criminal is the last effort as an ultimatum to parents that could change in attitude towards the child, but if one day they repeated the same act against his party Demak will immediately take legal action.

Preferred criminal punishment is the perpetrator's parents as a form of responsibility of acts committed against children by many years in prison, the victim (child) can only receive the retaliatory action by the sentencing judge is given to the perpetrators. After obtaining a verdict that is *incracht* of the court, the child as a victim is returned to his parents / relatives without rehabilitated. Then, in medical terms, such as the treatment (if there is a physical injury), and vise children as victims bear the cost themselves. In this case the child does not receive compensation as restitution or compensation and other legal aid.⁹

Legal protection is one way of Indonesia to recognize rights of citizens as stipulated in the Constitution of the Republic of Indonesia in 1945

(hereinafter referred to as the Constitution NRI 1945), Article 28 to Article 28 J. This proves that the state guarantee the protection of its citizens in order to achieve the desired aim that the state *kesejahteraan*.Warga referred in it are children. Article 28 B (2) Constitution NRI of 1945 states that "every child has the right to live, grow and develop and are entitled to be protected from violence and discrimination." The right to survival and growth and development as well as protected from violence and discrimination children's rights are protected by the Constitution NRI 1945.

Indonesia as a country that upholds the values of law, has a lot of rules relating to the protection of children against violence which has been enacted by the mandate of Article 28 B of paragraph 2 of the constitution NRI convention of 1945 and the United Nations in 1990, namely:

First, Article 52 paragraph 1 of Act. No.39 of 1999 on Human Rights (hereinafter referred to as the Law of Human Rights) states that "every child is entitled to protection by parents, families, communities and countries", then article 66 paragraph 1 confirms that "every child has the right to not be subjected to persecution, torture or inhuman punishment."

Second, Act 35 of 2014 on Protection of Children (hereinafter referred to as the Child Protection Act) set more specific about the legal protection of children. Under the general provisions of Article 1 point (2) of the Law on Child Protection, explained that the state, the government, communities, parents and families are required to

9 *Ibid*.

provide protection to children. Child protection including protection from violence, discrimination, exploitation, neglect, cruelty, maltreatment, torture, injustice and other abuses. The goal is that children can live, grow, develop and participate optimally in accordance dignity of humanity.

Article 4 of the Law on Child Protection also mentions "every child has the right to live, grow, develop and participate fairly in accordance with human dignity, and protection from violence and discrimination." Article 13 paragraph (1) letter (d) of the Law on child protection that "every child during the care of a parent, guardian, or any other party responsible for the care, the right to protection from abuse: cruelty, violence and abuse, and so on." in addition, article 16 paragraph (1) of the child protection Act states that: "Every child is entitled to protection from mistreatment, torture, or inhuman punishment."

Legal protection of victims of domestic violence is the responsibility of all components of the nation. Legal protection is not just setting the criminal sanctions to the perpetrators, but also regulate the processes of the lawsuit (formal legal / events), compensation, restoration, securing themselves a victim who has been regulated in the laws and regulations of Indonesia such as the Criminal Code, Act No. 23 2002 on the protection of Children and Act. No.23 of 2004 on the Elimination of domestic violence ladder aiming to prevent all forms of domestic violence and to provide legal protection for victims of

domestic violence.¹⁰Based on Article 20 of the Child Protection Act states that are obligated and responsible for the implementation of child protection is the state, governments, communities, families and the elderly. Furthermore, for a description of the protection and responsibility of children described in Act. No.35 of 2014 on Child Protection.

As for how and technical provision of temporary shelter and orders of protection, ie, if the criminal act of child abuse, both violence (physical, psychological, sexual, neglect both in the field of health education and welfare of children) victims who hear and see, and know the violence in children can be reported to the local police¹¹as stipulated in Article 69 paragraph (1) and (2) of Act. No.35 of 2014 on Child Protection.

A state law (rechtstaat) there are elements of the legal protection of children's rights. One of them under Article 6 of Law 35 of 2014 on Child Protection stipulates that every child has the right to worship according to their religion, thought, and expression in accordance with the level of intelligence and age in the guidance Parent or guardian. "In Article 1 (12) of Act. No.35 of 2014 states that "the rights of children are part of human rights which must be guaranteed, protected and fulfilled by parents, families, communities, countries, governments, and local governments. "Protection of children, according to Article 1 (2) of the Act 35 of 2014 that" All activities for menjamindan

10 Edy Ikhsan (ed), 2001, *Protection of Children Victims of Violence In Indonesia*, Indonesia Advocacy Institute, Medan, p .25.

11 *Ibid.*, Interview with AKP Tri Agung ...

protect children and their rights in order to live, grow, develop and participate optimally in accordance with human dignity, as well as protection against violent discrimination. "While understanding the waif according to Article 1 (6) of Act. No.35 2014 that "children are not met its needs fairly, whether physical, mental, spiritual, and social."

Besides normative protection or by legislation, the legal protection of children is also supported by dibangunnya infrastructure that child protection agencies that exist, such as the Institute for the Protection of Women and Children, and some organizations on child protection. Article 59A of Act No. 35 of 2014 concerning the specific safeguards for children are carried out through the efforts:

1. Rapid handling including pengobatan and / or rehabilitation of physically, psychologically and socially, as well as the prevention of diseases and other health disorders;
2. Psychosocial assistance at the time of treatment until recovery;
3. Provision of social assistance for children who come from poor families;
4. The provision of protection and assistance at every process protection.¹²

Children are the foundation for the nation, state, community, or family, because of his condition as a child, it would require special treatment in order to grow and develop naturally good physical, mental and spiritual. Kids as

young generation is one of the human resources is a potential successor to the ideals of national struggle in the future, which has a strategic role and has the characteristics and special nature, require the guidance and protection in order to ensure the growth and development of physical, mental, and social balance.¹³

Every child has the dignity that should be upheld tinggikan every child born should get their rights without the child asks. In the CRC in 1989 there were four (4) general principles that form the basis and reference for the parties, especially the State when performing its obligation to fulfill, respect and protect the rights of children. Those principles include:

1. The principle of non-discrimination, this principle requires States to have all children in conflict with the law get the same treatment;
2. Best Interests of the Child principle, the principle of the best interests of systematically taking into account the rights of the child and the child's interests will be affected by the decisions and actions of these bodies;
3. Principle Principle of Survival and Development;
4. Appreciation Kids principle.

Efforts are made to the prevention of crimes of violence against children, namely:

1. Preventive measures, including:
 - Socialization and counseling to the public on child protection.

¹² Ibid.

¹³ Ibid.

- Socializing at the school on the understanding and teaching of children to avoid crime.
- Working closely with the agencies concerned with child protection.

2. Repressive efforts, include:

- Provide protection for children victims of violence through the Women's Empowerment Agency for Child Protection.¹⁴

Efforts in fostering, development and protection, it should be the role of the community, whether through child protection agencies, religious institutions, community agencies, community organizations, social organizations, or educational institutions. With the enactment of Act. No.35 of 2014 on Child Protection is expected how the role of government, society and parents in addressing the exploitation of children as a government regulator that has a very important role in setting policies that benefit and in favor of human rights enforcement, especially children.

children can be reported to the local police, as well as legal protection for legal action undertaken by enforcing regulations that protect against victims of domestic violence on the lawsuit (formal legal / events), compensation, recovery,

C. CONCLUSION

Legal protection of children as victims of criminal acts of violence committed by parents in the region, namely Demak amicably Police and law. For protection amicably by providing granting temporary protection and orders of protection, ie, if the criminal act of child abuse, both violence (physical, psychological, sexual, neglect both in the field of health education and welfare of children) victims are heard and seen, and knowing the violence against

14 Act. No.35 of 2014 *About the Children Protection Amendment*.

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